

A PLAN FOR BUDGETING AND CASE MANAGEMENT IN CAPITAL HABEAS CASES IN THE DISTRICT OF ARIZONA

Introduction

This guide describes a budgeting and case management process for capital habeas cases in the District of Arizona that joins budgeting and effective case management in an attempt to conserve costs in capital habeas cases. Cases will be divided into logical phases for which budgets will be developed, and firm deadlines will be established for the completion of activities within each phase. During each phase:

- ➔ Lawyers are required to prepare and submit to the assigned District Judge a Case Management Plan and Budget for each phase of the case in advance of commencing work on that phase.
- ➔ Special forms are used in budget preparation that serve as planning and monitoring tools for lawyers and as management tools for the Court.
- ➔ The assigned Judge is encouraged to conduct a Case Management Conference (CMC) at the beginning of each phase to discuss the case and approve the proposed Case Management Plan and Budget. Note: Case budgets which exceed \$100,000 require Ninth Circuit approval.

It is expected that early and continuous judicial case management, based on realistic yet firm deadlines, will conserve Judges' time by creating realistic expectations on the part of counsel and by reducing time spent on contentious procedural activities.

The budgeting forms to be used by counsel in preparing and submitting budgets at each phase are included at the end of this guide. The forms incorporate a level of detail intended to assist counsel both in budgeting and in accounting for actual costs incurred and to assist the Court in evaluating the reasonableness of the budget and vouchers submitted. The Arizona plan is designed for flexible application; forms and orders will be revised as needed.

Judges are urged to consult with the District's CJA Voucher Review Analysts and Capital Case Staff Attorneys for assistance in matters pertaining to management of capital habeas cases.

COMMENCEMENT OF THE CASE

Overview

1. Petition for writ of habeas corpus filed along with motions for stay of execution and appointment of counsel.
The budgeting process described in this plan applies to a first petition filed in the case. Presumptive stays are available only for first-time petitions.
2. Case assigned to District Judge Capital Case Coordinator.
Initial assignment to the capital case coordinator provides for expedited consideration of stay and appointment orders.
3. Stay Order issued.
4. Order of Appointment and General Procedures and *Ex Parte* Cost Management Order issued. Case randomly reassigned case to a district judge.

Order of Appointment and General Procedures

- ➔ Counsel designated within ten (10) calendar days from application for appointment, but actual time may depend on the availability of lawyers. The Federal Public Defender will be appointed if available. Otherwise, appointment will be made from an established list of lawyers experienced in federal habeas practice. It is not assumed that co-counsel will be required. However, use of co-counsel may help develop a qualified pool of lawyers.
- ➔ CMC #1 set with reassigned Judge 20 calendar days from date of Appointment Order.

Ex Parte Cost Management Order

- ➔ Sets forth applicable Court CJA policies, hourly rate limits, and voucher requirements.
- ➔ Provides case evaluation and budget forms. Note: Automated forms utilizing Microsoft Excel are being developed.
- ➔ Petitioner's counsel advised to submit supplemental documentation in support of any proposed budget for experts and investigators. Note change: Resource requests are incorporated into the budgeting process but still must comply with the reasonable necessity standard set forth in 21 U.S.C. § 848(q)(9).

PHASE I: APPOINTMENT AND RECORD REVIEW

Phase I Overview

1. Case Management Conference (CMC) #1 held.

It is anticipated that the CMCs will not be lengthy. Duration will depend on case complexity and the issues under discussion. Usually, counsel will have acquired some knowledge of the case prior to attending the conference. All CMCs should be conducted on the record.

Counsel for both sides should be present at all CMCs for discussion of deadlines. Such discussions should precede budget discussions. However, creation of a budget should be a confidential proceeding because matters of strategy and witness development are involved. Knowledge of these matters is essential to the Court's determination of an appropriate budget but disclosure to the Arizona Attorney General at this stage would be improper.

2. Case Management Order #1 issued setting deadlines for Phase I.
3. Counsel submits Phase I Budget Form and Confidential Case Evaluation Form (CCEF).
4. District CJA Voucher Review Analyst and Capital Case Staff Attorney analyze Phase I budget and make recommendations to the Judge.
5. Court approves Phase I Budget.

Timely budget review by the Court is essential. The ability of counsel to comply with established deadlines depends, in part, on timely court response to budget submissions, motions, etc. The Court's goal should be budget review and approval within ten (10) days. An additional CMC may be scheduled if needed.

Counsel are expected to continue work on the case while the Court reviews the Phase I Case Management Plan and Budget Form.

6. Counsel prepares and submits Phase II Budget Form and updates CCEF.

Issues to be Resolved at CMC #1

- ➔ Case complexity. (Counsel will be expected to complete the CCEF to the extent possible at this stage and to update it as the case proceeds.)
- ➔ Statute of limitations (to the extent it can be discussed at this stage).
- ➔ Time needed for counsel to obtain the record and files of prior counsel.
- ➔ Record organization and management. (For example, lawyers may wish to have the pages of the record sequenced using a numbering stamp which facilitates reference to documents during the case and when preparing vouchers. Judges also should be aware that some voluminous cases may be suitable for imaging (or other) technology to facilitate automated page retrieval. Counsel is encouraged to employ paralegals to assist in record compilation and review.)
- ➔ Appropriate deadlines set.

Case Management Order #1

- ➔ Sets forth deadlines.
 - If counsel has not met with the Petitioner, a deadline of 20 calendar days from the date of CMC #1 will be set for such a meeting to occur.
 - Within 30 calendar days following CMC #1, counsel is to prepare and submit Phase I Budget Form (including CCEF).
 - CMC #2 to occur within 90 calendar days following CMC #1; setting a date certain is essential.
 - Counsel to complete assembly and review of the record prior to CMC #2. (Note: if prior counsel fails to cooperate, a subpoena duces tecum can be issued.)
 - Counsel to submit Phase II Budget Form one (1) week before CMC #2.
- ➔ Sets forth decisions on any other issues discussed at CMC #1.

Budget Considerations

- ➔ Counsel will be paid for preparation of the budget and all related forms because it is a component of case management. However, counsel will not be paid for voucher preparation.
- ➔ Average 60 page-per-hour standard should be used by counsel in developing the budget for record review.
- ➔ Vouchers are submitted bi-monthly and will be reviewed under standards of reasonableness set forth in the Guide to Judiciary Policies and Procedures for administration of the Criminal Justice Act, Volume VII (Appointment of Counsel in Criminal Cases). Note this change from previous monthly requirement. Timely submission should be enforced to ensure that expenditure of CJA funds coincides with the appropriate budget cycle. All costs for a given time period should be submitted on the same voucher (e.g., expenses, paralegal time, lawyer time, etc.).
- ➔ CJA Voucher Review Analyst compares approved budget to submitted vouchers.
- ➔ Counsel encouraged to contact the Court if in danger of exceeding the budget. Conversely, the Court may wish to contact counsel if vouchers suggest that the budget limit may be exceeded.
- ➔ Each voucher must have attached a reconciliation of actual expenditures vs. budgeted amounts. The budget forms are designed to accommodate such a reconciliation. Software to facilitate reconciliation is forthcoming.

PHASE II: PREPARATION OF AMENDED PETITION

Phase II Overview

1. District CJA Voucher Review Analyst and Capital Case Staff Attorney analyze Phase II budget and make recommendations to Judge.
2. CMC #2 held.
3. Case Management Order #2 issued setting deadlines for Phase II briefing.
4. Court approves Phase II Budget.
5. Research and briefing re: Amended Petition.
6. Periodic status report filed.
A brief status report is advocated, primarily for the purpose of alerting the Court to unexpected problems/developments in the case.
7. Amended Petition filed.
8. Answer filed.
9. Counsel prepares and submits Phase III Budget Form.

Issues to be Resolved at CMC #2

- ➔ Case complexity. (Counsel will have updated the CCEF while preparing Phase II Budget Form.)
- ➔ Time needed to conduct research on habeas claims.
- ➔ Use of paralegal assistance encouraged.
- ➔ Investigative and expert resource requests. Hourly rates, travel requirements, and extent of proposed investigation should be discussed.
- ➔ Appropriate deadlines set.

Case Management Order #2

- ➔ Sets forth deadlines.
- Amended Petition to be filed within 90 calendar days.
 - Answer to be filed within 60 calendar days after the Amended Petition.
 - Phase III Budget Form to be filed within 10 calendar days of the Answer.
 - Court approves Phase III Budget within 10 days or sets a CMC.
 - Traverse to be filed within 45 calendar days of the Answer.
- ➔ Sets forth decisions on any other issues discussed at CMC #2.

PHASE III: PREPARATION OF TRAVERSE & OTHER PLEADINGS

Phase III Overview

1. District CJA Voucher Review Analyst and Capital Case Staff Attorney analyze Phase III budget and make recommendations to Judge.
2. Court approves Phase III Budget within 10 days or sets optional CMC.
3. Research and briefing re: merits, exhaustion & procedural default, discovery, and evidentiary hearings.
4. Traverse filed.
5. Motion(s) for Discovery filed.
6. Motion(s) for Evidentiary Hearing filed.
7. Supplemental briefs re: Procedural Default (i.e., cause & prejudice, fundamental miscarriage of justice) filed if directed by the Court.

PHASE IV: EVIDENTIARY HEARING

Phase IV Overview

1. If no evidentiary hearing granted, Court rules on merits of claims and case proceeds to judgment, filing notice of appeal, etc.

Judges are urged to explicitly allocate time for ruling on the merits of claims to assure that decisions are rendered in a timely manner.

2. If hearing granted:

- a. Court issues order setting CMC #3 to prepare for evidentiary hearing.
- b. CMC #3 held.
- c. Court enters Case Management Order #3, setting relevant deadlines, including filing of Phase IV Budget Form.
- d. Counsel prepares and submits Phase IV Budget Form.
- e. District CJA Voucher Review Analyst and Capital Case Staff Attorney analyze Phase IV budget and make recommendations to Judge.
- f. Court approves Phase IV Budget within 10 days or sets optional CMC.
- g. Counsel conduct additional discovery, if authorized.
- h. Counsel prepare pre-hearing pleadings.
- i. Counsel prepare witnesses.
- j. Evidentiary hearing held.
- k. Counsel prepare post-hearing briefing.
- l. Court rules on merits of claims and case proceeds to judgment, filing notice of appeal, etc.

To minimize costs, the Judge should assess viable issues and request counsel to limit briefing to these issues.

3. Court rules on post-judgment motions, if any.
4. Court issues/denies certificate of appealability.

Issues to be Resolved at CMC #3 (If Evidentiary Hearing Scheduled)

- ➔ This is a short conference, serving as both a budgeting and a “hearing management” conference.
- ➔ Determine the time and resources needed for counsel to prepare for and conduct the evidentiary hearing. The Court will explore what facts are in dispute and what facts the Arizona Attorney General may be willing to admit.
- ➔ Determine how evidence will be received. It may be both effective and economical to handle most hearings on the papers with oral presentations only if requested by the Judge.
- ➔ Resolve discovery disputes, if any.
- ➔ Determine the time and resources required for post-hearing briefing and post-judgment motions to amend.
- ➔ Establish deadlines.